



IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

ROBERT BRELAND, JR., JESSICA
BRELAND, AND O.B., a minor child,
by and through his father and next
friend, JOSEPH BRELAND,

Plaintiffs,

v.

CITY OF GULF SHORES, ALABAMA,
MARK PERKINS, DAVID DREYER,
RALPH PEREDA, ALBERT "JASON"
BYRD, DeQUINTON CLARK,
REBECCA WALKER, et al.,

Defendants.

CIVIL ACTION NO.: CV-2017-901073

**MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION
FOR A MORE DEFINITE STATEMENT**

Come now the Defendants, City of Gulf Shores, Alabama, Mark Perkins, David Dreyer, Ralph Pereda, Albert "Jason" Byrd, and Dequinton Clark and move this Court for an order dismissing the Plaintiffs' claims against these Defendants. In support thereof, the Defendants would show as follows:

1. On September 4, 2017, Plaintiffs filed their Complaint in the Circuit Court of Baldwin County, Alabama. The allegations of the Plaintiffs' complaint surround the minor plaintiff's participation with a City of Gulf Shores little league football team. The head coach of the football team was Albert "Jason" Byrd. Robert "Joe" Breland and Dequinton Clark served as assistant coaches. Mark Perkins, David Dreyer and Ralph Pereda are employees of the City of Gulf Shores.

2. Plaintiffs allege that Jason Byrd, in taking sides with another parent, made the decision that Jessica Breland could not serve as team mom. Upon finding out that

Jessica was no longer the team mom, Robert Breland confronted Coach Byrd, calling him a coward. As a result of the confrontation, Robert Breland was banned from participating as an assistant coach in the season's two remaining games.

3. When Robert Breland and his son arrived at team's next game in Fairhope, they were told that they were banned from the next two games and forced to return the son's football equipment, causing the boy emotional distress.

4. Plaintiffs' complaint also alleges that the City of Gulf Shores did not perform a background check on Dequinton Clark, and despite the fact that he had drug convictions, allowed him to serve as assistant coach.

5. The Plaintiffs' complaint contains ten (10) causes of action, nine (9) of which are directed toward these Defendants.

6. Plaintiffs' first cause of action is outrage. The Alabama Supreme Court has recognized the tort of outrage in only three (3) areas: "(1) wrongful conduct within the context of family burials;¹ (2) an insurance agent's coercing an insured into settling an insurance claim;² and (3) egregious sexual harassment."³ *Callens v. Jefferson County Nursing Home*, 769 So.2d 273, 281 (Ala. 2000). Outside of these categories, even shocking conduct is often deemed by Alabama courts to be insufficient to create a jury question. *Styron v. City of Foley*, 2005 WL 3098926, *6 (S.D. Ala. 2005). Even

¹ See, e.g., *Gray Brown-Service Mortuary, Inc. v. Lloyd*, 729 So.2d 280 (Ala. 1999) (cemetery's secretive disinterment and gross abuse of corpse supported judgment in favor of plaintiff).

² See, e.g., *National Security Fire & Cas. Co. v. Bowen*, 447 So.2d 133, 141 (Ala. 1983) (insurance investigator's orchestration of false criminal charges against insured, threats of harm to insured's son, and holding insured at gunpoint to coerce settlement of insurance claim was conduct "so horrible, so atrocious, [and] so barbaric" as to constitute outrage).

³ See, e.g., *Machen v. Childersburg Bancorporation*, 761 So.2d 981 (Ala. 1999) (reversing summary judgment on finding that evidence of repeated inappropriate sexual conduct by plaintiff's supervisor at work precluded summary judgment).

assuming that the allegations of Plaintiffs' complaint are accurate, the Defendants' conduct is not so extreme in degree as to go beyond all possible bounds of decency to constitute the tort of outrage. See *American Road Service Co. v. Inmon*, 394 So.2d 361, 365 (Ala. 1980).

7. Plaintiffs' third and forth causes of action are for slander and libel against defendants Jason Byrd, David Dreyer and Mark Perkins. An action for libel or slander will lie only if the defendant publishes defamatory material about plaintiff to third party. *Rowe v. Isbell*, 599 So.2d 35 (Ala. 1992). To prove a communication was defamatory under Alabama law, Plaintiff must present evidence establishing the following elements: (1) a false and defamatory statement concerning the plaintiff; (2) an unprivileged communication of that statement to a third party; (3) fault amounting at least to negligence on the part of the defendant; and (4) either actionability of the statement irrespective of special harm with the existence of special harm caused by the publication of the statement. *Corporate America Car Wash System v. City of Birmingham*, 165 F.Supp 3d 1117 (N.D. Ala. 2016).

8. Plaintiffs have alleged Mark Perkins committed libel when he distributed a letter concerning Breland's actions to City employees Grant Brown, Matt Young, Nicole Ard and Ralph Pereda. Communication between corporation employees, within the line and scope of the employees' duties with the corporation, is not a publication to a third party. *Burks v. Pickwick Hotel*, 607 So.2d 187 (Ala. 1992).

9. Plaintiffs also claim that Jason Byrd falsely reported to employees of the City of Gulf Shores that Breland cursed at him and made threats at him. Plaintiffs claim that David Dreyer told employees of the City of Gulf Shores that Breland cursed and

made threats to Byrd. Plaintiffs' claims are due to be dismissed in the Plaintiff admits in his Complaint to confronting Byrd and calling him a coward; therefore, they are not false and defamatory. Even if the statements were false, in that Dreyer was assigned to monitor the games in the course and scope of his employment with the City of Gulf Shores, his communication to his employer does not constitute publication. With regard to the communications made by Byrd to the City of Gulf shores after being confronted by Breland, good faith communication is privileged if the party makes the communication promptly by duty owed either to the public or a third party. *Hoover v. Tuttle*, 611 So.2d 290 (Ala. 1992). As a volunteer football coach for the City of Gulf Shores, Byrd had a duty to report inappropriate behavior to the City.

10. Plaintiffs' fifth cause of action is claim for negligence against the City of Gulf Shores, Albert Jason Byrd, Ralph Pereda, Mark Perkins and David Dreyer. Plaintiffs allege that each of the Defendants in this count had a duty to protect the children by making sure to perform a background check on Dequinton Clark. Plaintiffs cite to no authority which requires the City or its employees to perform background checks on assistant coaches for a little league football team. Further, the Plaintiffs fail to make any showing as to how they were damaged by the City's alleged failure to perform a background check.

11. Plaintiffs' sixth, seventh, eighth and ninth causes of action are for negligent hiring, training, supervision and retention. To prove a claim for negligent training or supervision, an employer or supervisor may only be held liable when notice or knowledge, either actual or presumed, of unfitness has been brought to him. *Southland Bank v. A & A Drywall Supply Co., Inc.*, 21 So.3d 1196, 1214-1215 (Ala.

2008). Liability depends upon it being established by affirmative proof that such incompetency was actually known by the master or that, had he exercised due and proper diligence, he would have learned that would charge him in the law of such knowledge. *Id.* Plaintiffs have not shown that the City of Gulf Shores, Ralph Pereda or Mark Perkins had any knowledge that any particular employee needed additional supervision or training in a particular area.

12. In order for an employer to be liable for the negligent hiring or retention of its employees, the plaintiffs must also prove wrongful conduct on the part of the employee. *University Fed. Credit Union v. Grayson*, 878 So.2d 280, 291 (Ala. 2003). In that the Plaintiffs are unable to establish that any employee of the City has committed any tortious act, the claims for negligent hiring and retention cannot survive.

13. Plaintiff's tenth cause of action is for wantonness against all defendants⁴. Under Alabama law, wantonness involves the conscious doing of some act or the omission of some duty, while knowing of the existing conditions and being conscious that, from doing or omitting to do an act, injury will likely or probably result. *Temploy, Inc. v. National Council on Compensation Ins.*, 650 F.Supp. 2d 1145 (S.D. Ala. 2009). The facts as alleged in the Plaintiffs' complaint do not evidence reckless or conscious disregard for the rights or safety of others as it concerns these defendants. These claims are due to be dismissed.

⁴ As is concerns the claims for wantonness and outrage against the City of Gulf Shores, those claims are due to be dismissed as matter of law. The City of Gulf Shores can only be held liable for injuries caused by the negligence of its agents, officers, or employees. *Ala. Code* § 11-47-190. Thus, the City of Gulf Shores cannot be held liable for the intentional acts of its agents, officers, or employees. *Id.*; see also *Brooks v. City of Birmingham*, 584 So.2d 451 (Ala. 1991).

14. Finally, pursuant to Ala. Code § 6-5-336, both Jason Byrd and Dequinton Clark are immune from liability. In 1991, the Alabama Legislature enacted the Volunteer Service Act. The Legislature specifically declared that:

- (1) The willingness of volunteers to offer their services has been increasingly deterred by the perception that they put personal assets at risk in the event of tort actions seeking damages arising from their activities as volunteers;
- (2) The contribution of programs, activities and services to communities is diminished and worthwhile programs, activities and services are deterred by the unwillingness of volunteers to serve...;
- (3) The provisions of this section are intended to encourage volunteers to contribute their services...

As a result of these concerns, the Legislature enacted the following immunity provisions for all volunteers of governmental entities:

- (D) Any volunteer shall be immune from civil liability in any action on the basis of any act or omission of a volunteer resulting in damage or injury if:
 - (1) The volunteer was acting in good faith and within the scope of such volunteer's official functions and duties for a non-profit organization, a non-profit corporation, hospital or a governmental entity; and
 - (2) The damage was not caused by willful or wanton misconduct by such volunteer.

Ala. Code § 6-5-336(d)(1975)⁵. A "government entity" is defined to include any county or municipality. Ala. Code § 6-5-336(c)(1)(1975).

The allegations of Plaintiffs' complaint do not establish willful or wanton misconduct on the part of Dequinton Clark or Jason Byrd. These defendants are entitled to immunity.

WHEREFORE, in light of the foregoing, the Defendants respectfully request that the claims alleged against the by the Plaintiffs be dismissed. In the alternative, the defendants would request an order from the Court directing the Plaintiffs to more specifically plead the allegations contained in their Complaint.

⁵ A similar federal statute is codified at 42 U.S.C. § 14501 et seq.

Respectfully submitted:

s/Andrew J. Rutens

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of November, 2017, I electronically filed the foregoing with the Clerk of the Court using the AlaFile system, which will send notification of such filing to the following:

Christopher Callaghan

and I hereby certify that I have mailed by United States Postal Service the document to the following non-AlaFile participants:

Rebecca Walker
2117 N. Alston St.
Foley, AL 36535

s/Andrew J. Rutens